



BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER  
Chairman

WILLIAM MUNDELL  
Commissioner

MARC SPITZER  
Commissioner

MIKE GLEASON  
Commissioner

KRISTIN K. MAYES  
Commissioner

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LEVEL 3 COMMUNICATIONS, LLC,

Complainant,

vs.

QWEST CORPORATION,

Respondent.

Docket No. T-03654A-05-0415  
T-01051B-05-0415 ←

LEVEL 3 COMMUNICATIONS, LLC's REPLY  
TO THE COUNTERCLAIMS OF QWEST CORPORATION

1. Level 3 Communications, LLC ("Level 3") hereby submits this Reply to Qwest Corporation's Answer and Counterclaims to Level 3 Communications, LLC's Complaint to Enforce its Interconnection Agreement with Qwest, filed July 5, 2005 in the above-captioned proceeding.

I. INTRODUCTION

2. Level 3 seeks simple, straightforward relief in its Complaint: 1) enforcement of the change of law provisions of its Interconnection Agreement with Qwest Corporation ("Qwest") by requiring Qwest to execute an amendment reflecting the terms of the Federal Communication Commission's ("FCC") *Core Forbearance Order*<sup>1</sup>, and 2) payment of compensation for Qwest-originated ISP-bound traffic, as required by the terms of the *Core Forbearance Order*. Qwest answers Level 3's Complaint with more than 20 pages of rhetoric, going beyond what is procedurally appropriate for an Answer to a Complaint. Although Level 3 disagrees with Qwest's interpretation of the facts and law regarding this matter, it is neither necessary nor appropriate at this time to respond in depth to Qwest's legal arguments and conclusions. Level 3 will respond at the appropriate time during the briefing and testimony stages of this proceeding. In this Reply, Level 3 will confine itself to responding to Qwest's counterclaims.

II. REPLY TO QWEST'S COUNTERCLAIMS

3. Unless specifically admitted, Level 3 denies each and every allegation in Qwest's Counterclaims. Level 3 denies, admits, and alleges as follows:

4. Paragraphs 1 through 15 of Qwest's Answer and Counterclaims contain arguments regarding the facts and the law. Such arguments are inappropriate in an Answer and Counterclaim. Accordingly, Level 3 believes no response is necessary. However, to preserve all rights, Level 3 denies the allegations in Paragraphs 1 through 15.

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<sup>1</sup> *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order, FCC 04-241, WC Docket No. 03-171 (rel. Oct. 18, 2004) ("Core Forbearance Order").*

1           5.       Level 3 denies Qwest's characterization of the Parties' dispute in paragraph 16.  
2 Further, paragraph 16 contains conclusions of law to which no response is required. To the extent  
3 that paragraph 16 contains factual allegations, Level 3 denies such allegations.

4           6.       Paragraph 17 states conclusions of law to which no response is required. To the  
5 extent that paragraph 17 contains factual allegations, Level 3 denies such allegations.  
6

7           7.       Level 3 admits that Qwest has failed to pay intercarrier compensation for ISP-bound  
8 calls. Level 3 denies all remaining factual allegations in paragraph 18. To the extent paragraph 18  
9 states conclusions of law, no response is required within the procedural context of a Reply to  
10 Qwest's Counterclaims.

11           8.       Paragraph 19 states conclusions of law to which no response is required. To the  
12 extent that paragraph 19 contains factual allegations, Level 3 denies such allegations.  
13

14           9.       Paragraph 20 states conclusions of law to which no response is required within the  
15 procedural context of a Reply to Qwest's Counterclaims.

16           10.      Paragraph 21 states conclusions of law to which no response is required within the  
17 procedural context of a Reply to Qwest's Counterclaims.

18           11.      In response to Paragraph 22, Level 3 admits that it filed a petition for forbearance to  
19 the FCC. However, Qwest's purposefully mischaracterizes the substance of that petition. The  
20 petition as filed by Level 3 speaks for itself. Level 3 further admits that the FCC issued its Notice  
21 of Further Proposed Rulemaking in its Intercarrier Compensation docket while Level 3's petition  
22 was pending, and that Level 3 later withdrew the petition. The remaining portions of paragraph 22  
23 are conclusions of law to which no response is required within the procedural context of a Reply to  
24 Qwest's Counterclaims.  
25  
26

1           12. Paragraph 23 states conclusions of law to which no response is required within the  
2 procedural context of an Answer to Qwest's Counterclaims. To the extent that paragraph 23  
3 contains factual allegations, Level 3 denies such allegations.

4           13. Paragraph 24 states conclusions of law to which no response is required within the  
5 procedural context of a Reply to Qwest's Counterclaims. To the extent that paragraph 24 contains  
6 factual allegations, Level 3 denies such allegations.

7           14. Paragraph 25 states conclusions of law to which no response is required within the  
8 procedural context of a Reply to Qwest's Counterclaims.

9           15. Paragraph 26 states conclusions of law to which no response is required within the  
10 procedural context of a Reply to Qwest's Counterclaims.

11           16. Paragraph 27 states conclusions of law to which no response is required within the  
12 procedural context of a Reply to Qwest's Counterclaims.

13           17. Level 3 denies that paragraph 28 is an accurate statement of the Commission's  
14 decision in the AT&T/Qwest Arbitration and further responds that the decision speaks for itself.

15           18. In response to paragraph 29, the Commission's decision in the AT&T/Qwest  
16 Arbitration speaks for itself.

17           19. Level 3 admits that paragraph 30 accurately quotes the listed sections of Arizona  
18 Administrative Code. However, Level 3 denies that paragraph 30 is an accurate statement as to the  
19 application of these definitions.

20           20. Paragraph 31 states conclusions of law to which no response is required within the  
21 procedural context of a Reply to Qwest's Counterclaims.

1           21.     Paragraph 32 states conclusions of law to which no response is required within the  
2     procedural context of a Reply to Qwest's Counterclaims.

3           22.     Paragraph 33 states conclusions of law to which no response is required within the  
4     procedural context of a Reply to Qwest's Counterclaims. To the extent that paragraph 33 contains  
5     factual allegations, Level 3 denies such allegations.  
6

7           23.     Responding to Paragraph 34, Level 3 admits that the Parties have agreed to  
8     exchange VNXX traffic over LIS trunks and are currently doing so in Arizona. Level 3 denies the  
9     remaining allegations in paragraph 34.

10          24.     Level 3 admits the allegations in paragraph 35.

11          25.     Level 3 admits that paragraph 36 accurately quotes the ISP Amendment of the  
12     Interconnection Agreement. The remainder of paragraph 36 states conclusions of law to which no  
13     response is required within the procedural context of a Reply to Qwest's Counterclaims.  
14

15          26.     Level 3 admits that paragraph 37 accurately quotes Section 4.22 of the  
16     Interconnection Agreement. The remainder of paragraph 37 states conclusions of law to which no  
17     response is required within the procedural context of a Reply to Qwest's Counterclaims.

18          27.     Level 3 admits that paragraph 38 accurately quotes Section 4.30 of the  
19     Interconnection Agreement. The remainder of paragraph 38 states conclusions of law to which no  
20     response is required within the procedural context of a Reply to Qwest's Counterclaims.  
21

22          28.     Paragraph 39 states conclusions of law to which no response is required within the  
23     procedural context of a Reply to Qwest's Counterclaims. To the extent that paragraph 39 contains  
24     factual allegations, Level 3 denies such allegations.  
25  
26

1           29.     Paragraph 40 states conclusions of law to which no response is required within the  
2 procedural context of a Reply to Qwest's Counterclaims. To the extent that paragraph 40 contains  
3 factual allegations, Level 3 denies such allegations.

4           30.     Paragraph 41 states conclusions of law to which no response is required within the  
5 procedural context of a Reply to Qwest's Counterclaims. To the extent that paragraph 41 contains  
6 factual allegations, Level 3 denies such allegations.

7           31.     Paragraphs 42 through 57 set forth Qwest's responses Level 3's Complaint to which  
8 no responses are necessary.

9           32.     Paragraph 58 states conclusions of law to which no response is required within the  
10 procedural context of a Reply to Qwest's Counterclaims. To the extent that paragraph 58 contains  
11 factual allegations, Level 3 denies such allegations.

12           33.     Regarding Paragraph 59, Level 3 denies that Qwest has accurately set forth the  
13 applicable federal law regarding calls made to the Internet.

14           34.     Paragraph 60 states conclusions of law to which no response is required within the  
15 procedural context of a Reply to Qwest's Counterclaims. To the extent that paragraph 60 contains  
16 factual allegations, Level 3 denies such allegations.

17           35.     Regarding Paragraph 61, Level 3 denies that Qwest has accurately set forth the  
18 applicable state law regarding calls made to the Internet and calls using VNXX traffic.

19           36.     Paragraph 62 states conclusions of law to which no response is required within the  
20 procedural context of a Reply to Qwest's Counterclaims. To the extent that paragraph 62 contains  
21 factual allegations, Level 3 denies such allegations.

1           37.    Level 3 admits that it has sent or will bill Qwest based on the FCC's *Core*  
2    *Forbearance Order*. Level 3 denies the dates, amount in dispute, and all other allegations in  
3    paragraph 63.

4           38.    Regarding Paragraph 64, Level 3 admits that the Parties have not reached agreement  
5    on an amendment to the Interconnection Agreement, but denies that Qwest has proposed an  
6    amendment that complies with the *Core Forbearance Order*.

7           39.    Level 3 admits that paragraph 65 accurately quotes Section 2.2 of the  
8    Interconnection Agreement, but denies the remaining allegations in paragraph 65.

9           40.    Paragraph 66 states conclusions of law to which no response is required within the  
10   procedural context of a Reply to Qwest's Counterclaims. To the extent that paragraph 66 contains  
11   factual allegations, Level 3 denies such allegations.

12           41.    Level 3 admits that it provides its ISP customers with telephone numbers associated  
13   with the local calling areas they wish to serve. Level 3 denies the remainder of the allegations in  
14   paragraph 67.

15           42.    Level 3 admits that paragraph 68 accurately quotes Section 13.4 of the  
16   Interconnection Agreement, but denies the remaining allegations in paragraph 68.

17           43.    Level 3 admits that paragraph 69 accurately reflects Section 1.1 of Attachment A of  
18   the SPOP Amendment.

19           44.    Level 3 admits that paragraph 70 accurately quotes the ISP Amendment, but denies  
20   the remaining allegations.

1           45. Paragraph 71 states conclusions of law to which no response is required within the  
2 procedural context of a Reply to Qwest's Counterclaims. To the extent paragraph 71 contains  
3 factual allegations, Level 3 denies such allegations.

4           46. The remaining paragraphs set forth Qwest's requested relief to which no response is  
5 required.  
6

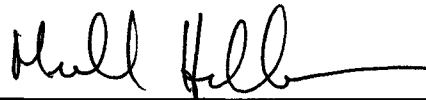
7                                   **III. PRAYER FOR RELIEF**

8           47. **WHEREFORE**, Level 3 respectfully requests that the Commission issue an Order:

- 9                   a. Granting the relief requested in Level 3's Complaint;  
10                   b. Dismissing Qwest's Counterclaims; and  
11                   c. Awarding such other relief, including, but not limited to, any appropriate  
12 fines or penalties, as the Commission deems just and reasonable.  
13

14  
15           RESPECTFULLY SUBMITTED this 1st day of August, 2005.

16                                   LEWIS AND ROCA LLP

17                                   

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22           ORIGINAL and fifteen (15) copies  
23 of the foregoing filed  
24 this 1st day of August, 2005, with:

25           The Arizona Corporation Commission  
26           Utilities Division – Docket Control  
                 1200 W. Washington Street  
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1 Copy of the foregoing hand-delivered  
2 this 1st day of August, 2005, to:

3 Christopher C. Kempley, Chief Counsel  
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18 COPY of the foregoing mailed this  
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